

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

v

PAXTON ELLIOT LATHAM,

Defendant-Appellant.

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UNPUBLISHED  
November 1, 2005

No. 254844  
Kent Circuit Court  
LC No. 03-006156-FC

Before: Gage, P.J., and Hoekstra, and Murray, JJ.

MEMORANDUM.

Defendant appeals as of right his jury trial convictions of second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony, MCL 750.227b. The convictions arose from the shooting of Robert Strickland outside a liquor store in Grand Rapids. We affirm.

Defendant argues that the trial court erred by admitting Rico Chapman's testimony that he was threatened shortly before trial began, and Brandon Mayhue's testimony that he was "jumped" by people defendant knew, also shortly before the trial began. We review issues regarding the admission of evidence for an abuse of discretion. *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003). However, defense counsel's failure to object to Mayhue's testimony limits our review to plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Defendant contends that, because no evidence linked him to the threats or beating, the testimony should not have been admitted. Defendant refers us to *United States v Mendez-Ortiz*, 810 F2d 76 (CA 6, 1986), in which the Sixth Circuit Court of Appeals held that evidence of a defendant threatening a witness is admissible to show consciousness of guilt. That is also the rule in Michigan. See *People v Sholl*, 453 Mich 730, 740; 556 NW2d 851 (1996). It is also generally true that for such evidence to be considered, it must be connected to the defendant. *People v Salisbury*, 134 Mich 537, 569-570; 96 NW 936 (1903); *People v Lytal*, 119 Mich App 562, 576-577 (1982). However, in the present case, the prosecution did not offer the evidence to show consciousness of guilt. The testimony was admitted for the sole purpose of assessing the witnesses' credibility. In *People v Johnson*, 174 Mich App 108, 112; 435 NW2d 465 (1989), this Court ruled that evidence of threats was relevant to witness bias where there was an indication that the witness was reluctant to testify against the defendant. Here, both Chapman and Mayhue testified that they were in court testifying only because they had been subpoenaed to

do so. Therefore, we are not persuaded that the trial court abused its discretion in admitting Chapman's testimony or committed plain error in admitting Mayhue's testimony.

Affirmed.

/s/ Hilda R. Gage

/s/ Joel P. Hoekstra

/s/ Christopher M. Murray